



This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

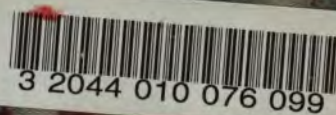
- + *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.
- + *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.
- + *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.
- + *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at <http://books.google.com/>

Sumner - Maritime Rights - 1862.

DS
5508
15



**HARVARD COLLEGE
LIBRARY**



**TRANSFERRED
FROM THE
GRADUATE SCHOOL
OF
BUSINESS ADMINISTRATION**



SPEECH

OF

HON. CHARLES SUMNER,

OF MASSACHUSETTS,

ON

MARITIME RIGHTS;

DELIVERED


IN THE SENATE OF THE UNITED STATES, JANUARY 9, 1862.

WASHINGTON:
PRINTED AT THE CONGRESSIONAL GLOBE OFFICE.
1862.

✓ W 5508.15

HARVARD COLLEGE LIBRARY
RECEIVED THROUGH THE
GRADUATE SCHOOL OF
BUSINESS ADMINISTRATION

FEB 4 1930

 Gueker, Jr.

SPEECH.

The hour having arrived for the consideration of the special order, the Senate proceeded to consider the motion of Mr. SUMNER, to refer to the Committee on Foreign Relations the message of the President, received on the 6th instant, relative to the recent removal of certain citizens of the United States from the British mail steamer Trent, by order of Captain Wilkes, in command of the United States war steamer San Jacinto.

Mr. SUMNER. Mr. President, every principle of international law, when justly and authoritatively settled, becomes a safeguard of peace and a landmark of civilization. It constitutes a part of that code which is the supreme law, above all municipal laws, binding the whole Commonwealth of Nations. Such a settlement may be by a general congress of nations, as at Munster, Vienna, or Paris; or it may be through the general accord of treaties; or it may be by a precedent established under such conspicuous circumstances, with all nations as assenting witnesses, that it shall at once become in itself a commanding rule of international conduct. Especially is this the case, if disturbing pretensions long maintained to the detriment of civilization, are practically renounced by the Power which has maintained them. Without any congress or treaties, such a precedent has been established.

Such a precedent ought to be considered and understood in its true character. In undertaking to explain it, I shall speak for myself alone; but I shall speak frankly, according to the wise freedom of public debate, and the plain teachings of history on the question involved, trusting sincerely that what I say may contribute something to elevate the honest patriotism of the country, and perhaps to secure that tranquil judgment which will render this precedent the herald, if not the guardian, of international harmony.

Two old men and two younger associates, recently taken from the British mail packet Trent on the high seas by order of Captain Wilkes of the United States Navy, and afterwards detained in custody at Fort Warren, have been liberated and placed at the disposition of the British Government. This has been done at the instance of that Government, courteously conveyed, and founded on the assumption that the original cap-

ture of these men was an act of violence which was an affront to the British flag, and a violation of international law. This is a simple outline of the facts. But in order to appreciate the value of this precedent, there are other matters which must be brought into view.

These two old men were citizens of the United States, and for many years Senators. Arrogant, audacious, persistent, perfidious—one was the author of the fugitive slave bill, and the other was the chief author of the filibustering system which has disgraced our national name and disturbed our national peace. Occupying places of trust and power in the service of their country, they conspired against it, and at last the secret traitors and conspirators became open rebels. The present rebellion, now surpassing in proportions and also in wickedness any rebellion in history, was from the beginning quickened and promoted by their untiring energies. That country to which they owed love, honor, and obedience, they betrayed and gave over to violence and outrage. Treason, conspiracy, and rebellion, each in succession, have acted through them. The incalculable expenditures which now task our national resources—the untold derangement of affairs not only at home but also abroad—the levy of armies almost without an example—the devastation of extended spaces of territory—the plunder of peaceful ships on the ocean, and the slaughter of fellow-citizens on the murderous battle-field; such are some of the consequences proceeding directly from them. To carry forward still further the gigantic crime of which they were so large a part, these two old men, with their two younger associates, stole from Charleston on board a rebel steamer, and, under cover of darkness and storm, running the surrounding blockade and avoiding the cruisers in that neighborhood, succeeded in reaching the neutral island of Cuba, where, with open display and the knowledge of the British consul, they embarked on board the British mail packet the Trent, bound for St. Thomas, whence they were to embark for England, in which kingdom one of them was to play the part of ambassador of the rebellion, while the other was to play the same part in France. The original treason, conspiracy, and rebellion of

which they were so heinously guilty, were all continued on this voyage, which became a prolongation of the original crime, destined to still further excess, through their ambassadorial pretensions, which, it was hoped, would array two great nations against the United States, and enlist them openly in behalf of an accursed slaveholding rebellion. While on their way, the ambassadors were arrested by Captain Wilkes, of the United States steamer *San Jacinto*, an accomplished officer, already well known by his scientific explorations, who, on this occasion, acted without instructions from his Government. If, in this arrest, he forgot for a moment the fixed policy of the Republic, which has been from the beginning like a frontlet between the eyes, and transcended the law of nations, as the United States have always declared it, his apology must be found in the patriotic impulse by which he was inspired, and the British examples which he could not forget. They were the enemies of his country, embodying in themselves the triple essence of worst enmity—treason, conspiracy, and rebellion; and they wore a pretended ambassadorial character, which, as he supposed, according to high British authority, rendered them liable to be stopped. If, in the ardor of an honest nature, Captain Wilkes erred, he might well say:

"Who can be wise, amazed, temperate, and furious,
Loyal and neutral in a moment? No man.
The expedition of my violent love
Outran the pauser reason."

"Who could refrain
That had a heart to love, and in that heart
Courage to make his love known?"

If this transaction be regarded exclusively in the light of British precedents; if we follow the seeming authority of the British admiralty, speaking by its greatest voice; and especially if we accept the oft-repeated example of British cruisers, upheld by the British Government against the oft-repeated protests of the United States, we shall not find it difficult to vindicate it. The act becomes questionable only when brought to the touchstone of these liberal principles, which, from the earliest times, the American Government has openly avowed and sought to advance, and which other European nations have accepted with regard to the sea. Indeed, Great Britain cannot complain except by now adopting those identical principles; and should we undertake to vindicate the act, it can be done only by repudiating those identical principles. Our two cases will be reversed. In the struggle between *Laertes* and *Hamlet*, the two combatants exchanged rapiers; so that *Hamlet* was armed with the rapier of *Laertes* and *Laertes* was armed with the rapier of *Hamlet*. And now on this sensitive question a similar exchange has occurred. Great Britain is armed with American principles, while to us is left only those British principles which, throughout our history, have been constantly, deliberately, and solemnly rejected.

Earl Russell, in his dispatch to Lord Lyons, communicated to Mr. Seward, contents himself by saying that "it appears that certain individuals have been forcibly taken from on board a British vessel, the ship of a neutral Power, *while such ves-*

sel was pursuing a lawful and innocent voyage—an act of violence which was an affront to the British flag, and a violation of international law." Here is a positive assertion that the ship, notoriously having on board the rebel emissaries, was pursuing a lawful and innocent voyage; but there is no specification of the precise ground on which the act in question is regarded as a violation of international law. Of course, it is not an affront; for an accident can never be an affront to an individual or to a nation.

But public report, authenticated by the concurring testimony of various authorities, English and continental, forbids us to continue ignorant of the precise ground on which this act is presented as a violation of international law. It was admitted that a United States man-of-war, meeting a British mail steamer beyond the territorial limits of Great Britain, might subject her to visitation and search; also that the United States ship of war might put a prize crew on board the British steamer, and carry her off to a port of the United States for adjudication by a prize court there; but that she would have no right to remove the emissaries, who were not apparently officers in the military or naval service, and carry them off as prisoners, leaving the ship to pursue her voyage. Under the circumstances, in the exercise of a belligerent right, the British steamer, with all on board, might have been captured and carried off; but according to the British law officers, on whose professional opinion the British cabinet has acted, the whole proceeding was vitiated by the failure to take the packet into port for condemnation. This failure has been the occasion of much unprofessional oburgation; and it has been emphatically repeated that it was impossible to consent that the custody of the individuals in question should be determined by a Navy officer on his quarter-deck, so as to supersede the adjudication of a prize court. This has been confidently stated by an English writer, assuming to put the case for his Government, as follows:

"It is not to the right of search that we object, but to the following seizure without process of law. What we deny is the right of a naval officer to stand in place of a prize court, and adjudicate, sword in hand, with a *sic volo sic jubeo* on the very deck which is a part of our territory."

Thus it appears that the present complaint of the British Government is not founded on the assumption by the American war steamer of the belligerent right of search; nor on the ground that this right was exercised on board a neutral vessel between two neutral ports; nor that it was exercised on board a mail steamer, sustained by a subvention from the Crown, and officered in part from the royal navy; nor that it was exercised in a case where the penalties of contraband could not attach; but it is founded simply and precisely on the idea that persons other than apparent officers in the military or naval service, cannot be taken out of a neutral ship at the mere will of the officer who exercises the right of search, and without any form of trial. Therefore, the law of nations has been violated, and the conduct of Captain Wilkes must be disavowed, while men, who are traitors, conspirators, and rebels, all in one, are allowed to go free.

Surely, that criminals, though dyed in guilt, should go free, is better than that the law of nations should be violated, especially in any rule by which war is restricted and the mood of peace is enlarged; for the law of nations cannot be violated without overturning the protection of the innocent as well as the guilty. On this general principle there can be no question. It is but an illustration of that important maxim, recorded in the Latin of Fortescue, "Better that many guilty should escape than one innocent man should suffer," with this difference, that in the present case four guilty men escape, while the innocent everywhere on the sea obtain new security. And this security becomes more valuable as a triumph of civilization, when it is considered that it was long refused, even at the cannon's mouth.

Do not forget, sir, that the question involved in this controversy is *strictly a question of law*—precisely like a question of trespass between two neighbors. The British cabinet began proceedings by taking the opinion of their law advisers, precisely as an individual begins proceedings in a suit at law by taking the opinion of his attorney. To make such a question a *case of war*, or to suggest that war is a proper mode of deciding it, is simply to revive, in colossal proportions, the exploded Ordeal by Battle, and to imitate those dark ages when such proceeding was openly declared to be the best and most honorable mode of deciding even an abstract point of law. "It was a matter of doubt and dispute," says a mediæval historian, "whether the sons of a son ought to be reckoned among the children of the family, and succeed equally with their uncles, if their father happened to die while their grandfather was alive. An assembly was called to deliberate on this point, and it was the general opinion that it ought to be remitted to the examination and decision of judges. But the emperor, following a better course, and desirous of dealing honorably with his people and nobles, appointed the matter to be decided by battle between two champions." In similar spirit has it been latterly proposed, amidst the amazement of the civilized world, to withdraw the point of law, now raised by Great Britain, from peaceful adjudication and submit it to Trial by Combat. But the irrational anachronism of such a proposition becomes more flagrant from the inconsistency of the party which makes it; for it cannot be forgotten that, in times past, on *this identical point of law*, Great Britain persistently held an opposite ground from that which she now takes. Perhaps hereafter, in a happier moment, this exacting Power may be disposed to regret the swiftness with which she undertook to gird herself for such an unnatural combat, on a mere point of law, with a friendly nation already struggling against domestic enemies—especially, as impartial history must record that her heavy sword was to be thrown into the scales of slavery.

The British complaint seems to have been narrowed down to a single point; but it is not to be disguised that there are yet other points on which, had the ship been carried into port for adjudication, controversy must have arisen. Not to omit anything important, let me say that the four fol-

lowing points, among others, have been presented in the case:

1. That the seizure of the rebel emissaries, without taking the ship into port, was wrong, *inasmuch as a Navy officer is not entitled to substitute himself for a judicial tribunal.*

2. That had the ship been carried into port, it would not have been liable on account of the rebel emissaries, *inasmuch as neutral ships are free to carry all persons not apparently in the military or naval service of the enemy.*

3. Are dispatches contraband of war, so as to render the ship liable to seizure?

4. Are neutral ships, carrying dispatches, liable to be stopped between two neutral ports?

These matters I shall consider in their order, giving special attention to the first, which is the pivot of the British complaint. If in this discussion I shall expose grievances which it were better to forget, be assured it is from no willingness to revive the buried animosities they once so justly aroused, but simply to exhibit the proud position on this question which the United States early and constantly maintained.

A question of international law should not be presented on any mere *argumentum ad hominem*. It would be of little value to show that Captain Wilkes was sustained by British authority and practice, if he were condemned by international law as interpreted by his own country. It belongs to us now, nay, let it be our pride, at any cost of individual prepossessions or transitory prejudices, to uphold that law in all its force, as it was often declared by the best men in our history, and illustrated by national acts; and let us seize the present occasion to consecrate its positive and unequivocal recognition. In exchange for the prisoners set free, we receive from Great Britain a practical assent, too long deferred, to a principle early propounded by our country, and standing forth on every page of our history. The same voice which asks for their liberation, renounces in the same breath an odious pretension, for whole generations the scourge of peaceful commerce.

Great Britain throughout her municipal history has practically contributed to the establishment of freedom beyond all other nations. There are at least seven institutions or principles which she has given to civilization: first, the trial by jury; secondly, the writ of *habeas corpus*; thirdly, the freedom of the press; fourthly, bills of rights; fifthly, the representative system; sixthly, the rules and orders of debate, constituting parliamentary law; and seventhly, the principle that the air is too pure for a slave to breathe—long ago declared and first made a reality by British law. No other nation can show such peaceful triumphs. But while thus entitled to our gratitude for glorious contributions to municipal law, we turn with dissent and sorrow from much which she has sought to fasten upon international law. In municipal questions, Great Britain drew inspiration from her own native common law, which was instinct with freedom; but especially in maritime questions arising under the law of nations this Power seems to have acted on that obnoxious principle of the Roman law, positively discarded in municipal questions, *Quod principi placuit legis*

vigorem habet, and too often, under this inspiration, to have imposed upon weaker nations her own arbitrary will. The time has been when she pretended to sovereignty over the seas surrounding the British isles, as far as Cape Finisterre to the south, and Vanstaten in Norway to the north. But driven from this Princely pretension, other pretensions, less local but hardly less offensive, were avowed. The boast of "Rule, Britannia, rule the waves," was practically adopted by British courts of admiralty, and universal maritime rights were subjected to the special exigencies of British interests. In the consciousness of strength, and with a navy that could not be opposed, this Power has put chains upon the sea.

The commerce of the United States, as it began to whiten the ocean, was cruelly decimated by these arbitrary pretensions. American ships and cargoes, while, in the language of Earl Russell, "pursuing a lawful and innocent voyage," suffered from the British admiralty courts more than from rock or tempest. Shipwreck was less frequent than confiscation; and when it came, it was easier to bear. But the loss of property stung less than the outrage of impressment, by which foreigners, under the protection of the American flag, and also American citizens, without any form of trial, and at the mere mandate of a navy officer, who for the moment acted as a judicial tribunal, were dragged away from the deck which should have been to them a sacred altar. This outrage, which was feebly vindicated by the municipal claim of Great Britain to the services of her own subjects, was enforced arrogantly and perpetually on the high seas, where municipal law is silent and international law alone prevails. The belligerent right of search, derived from international law, was employed for this purpose, and the quarter-deck of every British cruiser was made a floating judgment-seat. The practice began early, and was continued constantly; nor did it discriminate among its victims. It is mentioned by Mr. Jefferson, and repeated by a British writer on international law, that two nephews of Washington, on their way home from Europe, were ravished from the protection of the American flag, without any judicial proceedings, and placed as common seamen under the ordinary discipline of British ships of war. The victims were counted by thousands. Lord Castlereagh himself admitted, on the floor of the House of Commons, that an inquiry instituted by the British Government had discovered in the British fleet three thousand five hundred men claiming to be impressed Americans. At our Department of State six thousand cases were recorded, and it was estimated that at least as many more might have occurred, of which no information had been received. Thus, according to this official admission of the British minister, there was reason to believe that the quarter-deck of a British man-of-war had been made a floating judgment-seat three thousand five hundred times, while, according to the records of our own State Department, it had been made a floating judgment-seat six thousand times and upwards; and each time an American citizen had been taken from the protection of his flag without any form of trial.

If a pretension so intrinsically lawless could be sanctioned by precedent, Great Britain would have succeeded in interpolating it into the law of nations.

Protest, argument, negotiation, correspondence, and war itself—unhappily the last reason of republics as of kings—were all employed in vain by the United States to procure a renunciation of this intolerable pretension. The ablest papers in our diplomatic history are devoted to this purpose; and the only serious war in which we have been engaged, until summoned to encounter this rebellion, was to overcome by arms this very pretension which would not yield to reason. Beginning in the last century, the correspondence is at last closed by the recent reply of Mr. Seward to Lord Lyons. The long-continued occasion of conflict is now happily removed, and the pretension disappears forever—to take its place among the curiosities of the past.

But I do not content myself with asserting the persistent opposition of the American Government. It belongs to the argument, that I should exhibit this opposition and the precise ground on which it was placed—being identical with that now adopted by Great Britain. And here the testimony is complete. If you will kindly follow me, you shall see it from the beginning in the public life of our country, and in the authentic records of our Government.

This British pretension aroused and startled the Administration of Washington, and the pen of Mr. Jefferson, his Secretary of State, was enlisted against it. In a letter to Thomas Pinckney, our minister at London, dated June 11, 1792, he said:

"The simplest rule will be that the vessel being American shall be evidence that the seamen on board her are such."

In another letter to the same minister, dated October 12, 1792, he calls attention to a case of special outrage, as follows:

"I inclose you a copy of a letter from Messrs. Blow and Melhaddo, merchants of Virginia, complaining of the taking away of their sailors on the coast of Africa by the commander of a British armed vessel. So many instances of this kind have happened that it is quite necessary that their Government should explain themselves on the subject, and be led to disavow and punish such conduct."—*State Papers*, vol. 3, p. 574.

The same British pretension was put forth under the Administration of John Adams, and was again encountered. Mr. Pickering, at that time Secretary of State, in a letter to Rufus King, our minister at London, dated June 8, 1796, after repeating the rule proposed by Mr. Jefferson, says:

"But it will be an important point gained, if on the high seas our flag can protect those of whatever nation who shall sail under it. And for this humanity, as well as interest, powerfully pleads."—*State Papers*, vol. 3, p. 574.

And again, at a later day, during the same Administration, Mr. Marshall, afterwards the venerated Chief Justice of the United States, and at the time Secretary of State, in his instructions to Rufus King, at London, dated September 20, 1800, says:

"The impressment of our seamen is an injury of very serious magnitude, which deeply affects the feelings and honor of the nation." * * * * * "Alien

seamen, not British subjects, engaged in our merchant service, ought to be equally exempt with citizens. Britain has no pretext of right to their persons or to their service. *To tear them from our possession is at the same time an insult and an injury. It is an act of violence for which there exists no palliative.*"—*State Papers*, vol. 3, p. 489.

The same British pretension showed itself constantly under the Administration of Mr. Jefferson. Throughout the eight years of his Presidency, the repeated outrages of British cruisers never for a moment allowed it to be forgotten. Mr. Madison during this full period was Secretary of State, and none of the varied productions of his pen are more masterly than those in which he exposed the tyranny of this pretension. In the course of this discussion he showed the special hardship found in the fact that the sailors were taken from the ship at the mere will of an officer, without any form of judicial proceedings, and thus early presented against the pretension of Great Britain the precise objection which is now adopted by her. Here are his emphatic words, in his celebrated instructions to Mr. Monroe, at that time our minister at London, dated January 5, 1804:

"Taking reason and justice for the tests of this practice, it is peculiarly indefensible, because it deprives the dearest rights of persons of a regular trial, to which the most considerable article of property captured on the high seas is entitled, and leaves the destiny to the will of an officer, sometimes cruel, often ignorant, and generally interested, by want of mariners, in his own decisions. Whenever property found in a neutral vessel is supposed to be liable, on any ground, to capture and condemnation, the rule in all cases is, that the question shall not be decided by the captor, but be carried before a legal tribunal, where a regular trial may be had, and where the captor himself is liable to damages for an abuse of his power. Can it be reasonable, then, or just, that a belligerent commander who is thus restricted, and thus responsible in a case of mere property of trivial amount, should be permitted, without recurring to any tribunal whatever, to examine the crew of a neutral vessel, to decide the important question of their respective allegiances, and to carry that decision into execution by forcing every individual he may choose into a service abhorrent to his feelings, cutting him off from his most tender connections, exposing his mind and his person to the most humiliating discipline, and his life itself to the greatest danger? Reason, justice, and humanity unite in protesting against so extravagant a proceeding."—*State Papers*, vol. 3, p. 84.

Negotiations, on this principle, thus distinctly declared, were intrusted at London to James Monroe, afterwards President of the United States, and to William Pinkney, the most accomplished master of prize law which our country has produced. But they were unsuccessful. Great Britain persisted. In a joint letter dated at London, September 11, 1806, the plenipotentiaries say:

"That it was impossible that we should acknowledge in favor of any foreign Power the claim to such jurisdiction on board our vessels found upon the main ocean, as this sort of imprisonment implied—a claim as plainly inadmissible in its principle, and derogating from the unquestionable rights of our sovereignty, as it was vexatious in its practical consequences."—*State Papers*, vol. 3, p. 134.

In another joint letter dated at London, November 11, 1806, the same plenipotentiaries say:

"The right was denied by the British commissioners, who asserted that of their Government to seize its subjects on board neutral merchant vessels on the high seas, and who also urged that the relinquishment of it at this time would go far to the overthrow of their naval power, on which the safety of the state essentially depended."—*State Papers*, vol. 3, p. 133.

In still another letter, dated at London, April 22, 1807, Messrs. Monroe and Pinkney say of the British commissioners:

"They stated that the prejudice of the navy and of the country generally was so strong in favor of their pretension that the ministry could not encounter it in a direct form; and that in truth the support of Parliament could not have been relied on in such a case."—*State Papers*, vol. 3, p. 160.

The British commissioners were two excellent persons, Lord Holland and Lord Auckland; but though friendly to the United States in their declarations, and Liberals in politics, they were powerless.

At home in the United States the question continued to be discussed by able writers. Among those, whose opinions were of the highest authority, was the late President, John Adams, who from his retirement at Quincy sent forth a pamphlet, dated January 9, 1809, in which the British pretension was touched to the quick; and again the precise objection was presented which is now urged by Great Britain. Depicting the scene when one of our ships is encountered by a British cruiser, he says:

"The lieutenant is to be the judge, the midshipman is to be clerk, and the boatswain sheriff or marshal." * * * "It is impossible to figure to ourselves, in imagination, this solemn tribunal and venerable judge without smiling, till the humiliation of our country comes into our thoughts and interrupts the sense of ridicule by the tears of grief or vengeance."—*John Adams's Works*, vol. 9, p. 322.

At last all redress through negotiation was found to be impossible; and this pretension, aggravated into multitudinous tyranny, was openly announced to be one of the principal reasons for the declaration of war against Great Britain in 1812. In his message to Congress, dated June 1, of that year, Mr. Madison, who was now President, thus exposed the offensive character of this pretension; and his words, directed against a persistent practice, are now echoed by Great Britain, in the single instance which has accidentally occurred:

"Could the seizure of British subjects in such cases be regarded as within the exercise of a belligerent right, the acknowledged laws of war, which forbid an article of captured property to be adjudged without a regular investigation before a competent tribunal, would imperiously demand the fairest trial where the sacred rights of persons were at issue. In place of such a trial, these rights are subjected to the will of every petty commander."—*Statesman's Manual*, vol. 1, p. 294.

While the war was waging the subject was still discussed. Mr. Grundy, of Tennessee, in the House of Representatives, in a report from the Committee on Foreign Affairs, said:

"A subaltern or any other officer of the British navy ought not to be arbiter in such a case. The liberty and lives of American citizens ought not to depend on the will of such a party."—*State Papers*, vol. 3, p. 605.

Such was the American ground. The British pretension was unhesitatingly proclaimed in the declaration of the Prince Regent, afterwards George IV, given at the palace of Westminster, January 9, 1813:

"The President of the United States has, it is true, since proposed to Great Britain an armistice; not, however, on the admission that the cause of war hitherto relied on was removed; but on condition that Great Britain, as a preliminary step, should do away a cause of war now brought

forward as such for the first time, namely, that *she should abandon the exercise of her UNDOUBTED RIGHT of search to take from American merchant vessels British seamen, the natural-born subjects of his Majesty.*

"His Royal Highness can never admit that, in the exercise of the UNDOUBTED and hitherto undisputed right of searching neutral merchant vessels in time of war, the impressment of British seamen, when found therein, can be deemed any violation of a neutral flag. Neither can he admit that the taking of such seamen from on board such vessels can be considered by any neutral State as a hostile measure or a justifiable cause of war."

The war was closed by the treaty at Ghent; but perversely the British pretension was not renounced. Other negotiations in 1818, under President Monroe; in 1823, also under Monroe; and again in 1827, under John Quincy Adams, expressly to procure its renunciation, were all unavailing. Of these various negotiations, I forbear all details; but the language of Mr. Rush, our minister at London, who pressed this question assiduously for several years, beginning with 1818, should not be omitted. The case was never stated more strongly:

"Let the steps by which the enforcement proceeds be attended to. A British frigate, in time of war, meets an American merchant vessel at sea, boards her, and, under terror of her guns, takes out one of the crew. The boarding lieutenant asserts, and, let it be admitted, believes, the man to be a Briton. By this proceeding the rules observed in deciding upon any other fact where individual or national rights are at stake, are wholly overlooked. The lieutenant is accuser and judge. He decides upon his own view entirely. The case ends. No appeal follows. There is no trial of any kind. More important still, there is no remedy should it appear that a wrong has been committed."—*Rush's Residence at the Court of London.*

At last, in 1842, at the treaty of Washington, Mr. Webster, calmly setting aside all idea of further negotiation on this pretension, and without even proposing any stipulation with regard to it, deliberately announced the principle irrevocably adopted by our Government. It was the principle early announced at the beginning of the Republic by Mr. Jefferson. This dispatch is one of the most memorable in our history, and it bears directly on the existing controversy when, in exposing the British pretension, it says:

"But the lieutenant of a man-of-war, having necessity for men, is apt to be a summary judge, and his decisions will be quite as significant of his own wants and his own power as of the truth and justice of the case."—*Webster's Works*, vol. 6, p. 323.

At a later day still, on the very eve of recent events, we find General Cass, as Secretary of State, in his elaborate instructions to our ministers in Europe, dated 27th June, 1859, declaring principles which may properly control the present question. He says:

"It is obvious, from the temper of the age, that the present is no safe time to assert and enforce pretensions on the part of belligerent Powers affecting the interest of nations at peace, unless such pretensions are clearly justified by the law of nations." "The stopping of neutral vessels upon the high seas, their forcible entrance, and the overhauling and examination of their cargoes, the seizure of their freight, at the will of a foreign officer, the frequent interruption of their voyages by compelling them to change their destination, in order to seek redress; and, above all, the abuses which are so prone to accompany the exercise of unlimited power, where responsibility is remote; these are, indeed, serious obstructions, little likely to be submitted to in the present state of the world without a formidable effort to prevent them."

Such is an authentic history of this British pretension, and of the manner in which it has been met by our Government. And now the special argument formerly directed by us against this pretension is directed by Great Britain against the pretension of Captain Wilkes to take two rebel emissaries from a British packet ship. If Captain Wilkes is right in this pretension, then throughout all these international debates, extending over at least two generations, we have been wrong.

But it has been sometimes said the steam packet having on board the rebel emissaries was on this account liable to capture, and therefore the error of Captain Wilkes in taking the emissaries was simply an error of form and not of substance. I do not stop to consider whether an exercise of summary power against which our Government has so constantly protested can be under any circumstances an error merely of form, for the policy of our Government, most positively declared in its diplomacy, and also attested in numerous treaties, leaves no room to doubt that a neutral ship with belligerent passengers—not in the military or naval service—is not liable to capture, and therefore the whole proceeding was wrong, not only because the passengers were taken from the ship, but also because the ship, howsoever guilty morally, was not guilty legally in receiving such passengers on board. If this question were argued on English authorities it might be otherwise; but according to American principles the ship was legally innocent. Of course, I say nothing of the moral guilt which an indignant patriotism will find forever indelible in that ship.

In the middle of the last century, the Swiss professor Vattel declared that on the breaking out of war we cease to be under any obligation of leaving the enemy to the free enjoyment of his rights; and this principle he applied loosely to the transit of ambassadors. (Vattel, book 4, cap. 7, sec. 85.) Sir William Scott, afterwards known in the peerage as Lord Stowell, afterwards known in the peerage as Lord Stowell, quoting this authority, at the beginning of the present century, let fall these words:

"The belligerent may stop the ambassador of the enemy on his passage."—*The Atalanta*, 6 Robinson R., p. 440.

And this curt proposition, though in some respects indefinite, has been often repeated since by writers on the law of nations. On its face it leaves the question unsettled, whether the emissaries of an unrecognized government can be stopped? But there is another case in which the same British judge, who has done so much to illustrate international law, has used language which seems to embrace not only authentic ambassadors but also pretenders to this character, and all others who are public agents of the enemy. Says this eminent magistrate:

"It appears to me on principle to be but reasonable that whenever it is of sufficient importance to the enemy that such persons should be sent out on the public service and at the public expense, it should afford equal ground of forfeiture against the vessel that may be let out for a purpose so intimately connected with hostile operations."—*The Orozambo*, 6 Robinson R., p. 434.

Admit that the emissaries of an unrecognized government cannot be recognized as ambassadors with the liabilities as well as immunities of this

character, yet, in the face of these words, it is difficult to see how a Government bowing habitually to the authority of Sir William Scott, and regarding our rebels as "belligerents," can assert that a steam packet, conveying emigrants from these belligerents, "sent out on the public service and at the public expense," was, according to the language of Lord Russell, "pursuing a lawful and innocent voyage." At least, in this assertion, this Government seems to turn its back again upon its own history; or it sets aside the facts so openly boasted with regard to the public character of these fugitives.

On this question British policy may change with circumstances, and British precedents may be uncertain, but the original American policy is unchangeable, and the American precedents which illustrate it are solemn treaties. The words of Vattel, and the judgments of Sir William Scott, were well known to the statesmen of the United States; and yet, in the face of these authorities, which have entered so largely into this debate, the American Government at an early day deliberately adopted a contrary policy, to which, for half a century, it has steadily adhered. It was plainly declared that *only soldiers or officers could be stopped*, thus positively excluding the idea of stopping ambassadors, or emissaries of any kind, not in the military or naval service. Mr. Madison, who more than any other person shaped our national policy on maritime rights, has stated it on this question. In his remarkable dispatch to Mr. Monroe, at London, dated January 5, 1804, he says:

"The article renounces the claim to take from the vessels of the neutral party, on the high seas, any person whatever *not in the military service of an enemy*, an exception which we admit to come within the law of nations, on the subject of contraband of war. *With this exception, we consider a neutral flag on the high seas as a safeguard to those sailing under it.*"—*State Papers*, vol. 3, p. 83.

Then again, in the same dispatch, Mr. Madison says:

"Great Britain, then, must produce an exception in the law of nations in favor of the right she contends for. In what written and received authority will she find it? In what usage, except her own, will it be found?" * * * "But nowhere will she find an exception to this freedom of the seas and of neutral flags, which justifies the taking away of any person, *not an enemy in military service*, found on board a neutral vessel."—*Ibid.*, p. 84.

And then; again, in the same dispatch, he says:

"Whenever a belligerent claim against persons on board a neutral vessel is referred to in treaties, *enemies in military service* alone are excepted from the general immunity of persons in that situation; and *this exception confirms the immunity of those who are not included in it.*"—*Ibid.*, p. 84.

It was in pursuance of this principle, thus clearly announced and repeated, that Mr. Madison instructed Mr. Monroe to propose a convention between the United States and Great Britain, containing the following stipulation:

"No person whatever shall, upon the high seas and without the jurisdiction of either party, be demanded or taken out of any ship or vessel belonging to citizens or subjects of one of the parties, by the public or private armed ships belonging to or in the service of the other, *unless such person be at the time in the military service of an enemy of such other party.*"—*Ibid.*, p. 85.

Mr. Monroe pressed this stipulation most earnestly upon the British Government; but though

treated courteously, he could get no satisfaction with regard to it. Lord Harrowby, the Foreign Secretary, in one of his conversations, "expressed a concern to find the United States opposed to Great Britain on certain great neutral questions in favor of the doctrines of the modern law, which he termed *novelties.*" (State Papers, vol. 3, p. 99.) And Lord Mulgrave, who succeeded this accomplished nobleman, persevered in the same dissent. Mr. Monroe writes, under date of 18th October, 1805:

"On a review of the conduct of this Government towards the United States, I am inclined to think that the delay which has been so studiously sought is part of a system, and that it is intended, as circumstances favor, to subject our commerce at present and hereafter to every restraint in their power."—*State Papers*, vol. 3, p. 107.

Afterwards Mr. Monroe was joined, as we have already seen, by Mr. Pinkney in the mission to London, and the two united in presenting this same proposition again to the British Government. (State Papers, vol. 3, p. 137.) It was rejected, although the ministry of Mr. Fox, who was then in power, seems to have afforded at one time the expectation of an agreement.

While these distinguished plenipotentiaries were pressing this principle at London, Mr. Madison was maintaining it at home. In an unpublished communication to Mr. Merry, the British minister at Washington, bearing date 9th April, 1805, which I extract from the files of the State Department, he declared:

"The United States cannot accede to the claim of any nation to take from their vessels on the high seas *any description of persons, except soldiers* in the actual service of the enemy."

In a reply, bearing date 12th April, 1805, this principle was positively repudiated by the British minister; so that the two Governments were ranged unequivocally on opposite sides. And this attitude of the two Governments was continued. In the subsequent negotiations at London—intrusted to Mr. Rush—in 1818, we find the two Powers face to face. The foreign secretary was the celebrated Lord Castlereagh, who, according to Mr. Rush, did not hesitate to complain—

"That we gave to our ships a character of inviolability that Great Britain did not; that we considered them as *part of the soil, clothing them with like immunities.*"—*Rush's Residence at the Court of London.*

To which Mr. Rush replied:

"That we did consider them as thus inviolable, so far as to afford protection to our seamen; but that we had never sought to exempt them from search for rightful purposes, viz: for enemy's property, articles contraband of war, or men in the land or naval service of the enemy. These constituted the utmost limit of the belligerent claim, as we understood the law of nations."—*Ibid.*

Two champions were never more completely opposed than were the two Governments on this question.

The treaties of the United States with foreign nations are in harmony with this principle so energetically proposed and upheld by our Government; beginning with the treaty of commerce with France in 1778, and ending only with the treaty with Peru in 1851. Here is the provision in the treaty with

France, negotiated by Benjamin Franklin, whose wise forethought is always conspicuous:

"And it is hereby stipulated that free ships shall also give a freedom to goods, and that everything shall be deemed to be free and exempt which shall be found on board the ships belonging to the subjects of either of the confederates, although the whole lading or any part thereof should appertain to the enemies of either, contraband goods being always excepted. It is also agreed in like manner that the same liberty be extended to persons who are on board a free ship, with this effect, that although they be enemies to both or either party, they are not to be taken out of that free ship, unless they are soldiers in actual service of the enemies."—*Statutes at Large*, vol. 8, p. 26.

The obvious effect of this stipulation is two-fold: first, that enemies, unless soldiers in actual service, shall not be taken out of a neutral ship; and secondly, that such persons are not contraband of war so as to affect the voyage of a neutral with illegality. Such was the proposition of Franklin, of whom it has been said, that he snatched the lightning from the skies, and the scepter from the tyrant. That he sought to snatch the trident also is attested by his whole diplomacy, of which this proposition is a part. But the same principle will be found in succeeding treaties, sometimes with a slight change of language. In the treaty with the Netherlands, negotiated by John Adams in 1782, the exception is confined to "military men actually in the service of an enemy," (*Ibid.*, p. 38;) and this same exception will also be found in the treaty with Sweden, in 1782, (*Ibid.*, p. 64;) with Prussia, in 1785, (*Ibid.*, p. 90;) with Spain, in 1795, (*Ibid.*, p. 146;) with France, in 1800, (*Ibid.*, p. 184;) with Columbia, in 1824, (*Ibid.*, p. 312;) with Central America, in 1825, (*Ibid.*, p. 328;) with Brazil, in 1828, (*Ibid.*, p. 393;) with Mexico, in 1831, (*Ibid.*, p. 416;) with Chili, in 1832, (*Ibid.*, p. 436;) with Venezuela, in 1836, (*Ibid.*, p. 472;) with Peru-Bolivia, in 1836, (*Ibid.*, p. 490;) with Ecuador, in 1839, (*Ibid.*, p. 540;) with New Granada, in 1846, (*Statutes*, vol. 9, p. 888;) with Guatemala, in 1849, (*Statutes*, vol. 110, p. 880;) with San Salvador, in 1850, (*Ibid.*, p. 894;) and in the treaty with Peru, in 1851, (*Ibid.*, p. 936.) Such is the unbroken testimony, in the most solemn form, to the policy of our Government. In some of the treaties the exception is simply "soldiers," in others it is "officers or soldiers." Do not forget that every treaty testifies to the opinions of the Administration that negotiated it, and of at least two thirds of the Senate that ratified it—so that this large number of treaties constitutes a mass of authority from which there can be no appeal, embracing all the great names of our history. It is true that among these treaties there is none with Great Britain; but it is also true that this is simply because this Power refused its assent when this principle was presented by our Government as an undoubted part of international law which it desired to confirm by treaty.

Clearly and beyond all question, according to American principles and practice, the ship was not liable to capture on account of the presence of emissaries, "not soldiers or officers;" nor could such emissaries be legally taken from the ship. But the completeness of this authority is increased by the concurring testimony of the continent of Europe. Since the peace of Utrecht, in 1713, the pol-

icy of the continental States has generally refused to sanction the removal of enemies from a neutral ship, unless military men in actual service. And now, since this debate has commenced, we have the positive testimony of the French Government to the same principle, given with special reference to the present case. M. Thouvenel, the Minister of the Emperor for Foreign Affairs, in a recent letter communicated to Mr. Seward, and published with the papers now before the Senate, earnestly insists that the rebel emissaries, not being military persons actually in the service of the enemy, were not subject to seizure on board a neutral ship. I leave this question with the remark that it is perhaps Great Britain alone whose position on it can be brought into doubt. Originally a party to the treaty of Utrecht, this imperial Power soon saw that its provisions in favor of maritime rights interfered plainly with that dictatorship of the sea which she was then grasping. Maritime rights were repudiated, and her admiralty courts have ever since enforced this early repudiation.

But still another question occurs. Beyond all doubt, there were "dispatches" from the rebel belligerents on board the ship—such "dispatches" as rebels can write. Public report, the statement of persons on board the ship, and the boastful declaration of Jefferson Davis in a public document, that these emissaries were proceeding under an appointment from him—which appointment would be a "dispatch" of the highest character—seem to place this fact beyond denial. Assuming this fact, the ship was liable to capture and to be carried off for adjudication, according to British authorities—unless the positive judgment of Sir William Scott in the case of the *Atalanta*, (6 Robinson R., p. 440,) and also the Queen's proclamation at the commencement of this rebellion, where "dispatches" are enumerated among contraband articles, are treated as nullities, or so far modified in their application as to be words, and nothing more. But however binding and peremptory these authorities may be in Great Britain, they cannot be accepted to reverse the standing policy of the United States, which here again leaves no room for doubt. In order to give precision to the rights which it claimed and at the same time accorded on the ocean, our Government has sought to explain in treaties what it meant by contraband. As early as 1778, in the treaty with France, negotiated by Benjamin Franklin, after specifying contraband articles, without including dispatches, it is declared that

"Free goods are all other merchandise and things which are not comprehended and particularly mentioned in the foregoing enumeration of contraband goods."—*Statutes at Large*, vol. 8, p. 26.

This was before the judgment of Sir William Scott, recognizing dispatches as contraband; but in other treaties subsequent to this well known judgment, and therefore practically discarding it, after enumerating contraband articles, without specifying "dispatches," the following provision is introduced:

"All other merchandises and things not comprehended in the articles of contraband explicitly enumerated and classified as above, shall be held and considered as free."—*Ibid.*, p. 312; *Treaty with Columbia and later treaties passim*.

Thus we have not only positive words of enumeration, without mentioning "dispatches," but also positive words of exclusion, so that dispatches cannot be considered as contraband. These treaties constitute the conclusive record of our Government on this question. And here let me remark, that, while decisions of British Admiralty courts on all these matters are freely cited, no decisions of our Supreme Court are cited. Of course, if any existed, they would be of the highest value, but there are none, and the reason is obvious. These matters could not arise before our Supreme Court, because under our Government they are so clearly settled by treaties and diplomacy as to be beyond question.

Clearly, then, and beyond all question, according to American principles and practice, the ship was not liable to capture on account of dispatches on board. And here again we have the concurring testimony of continental Europe, if we may accept the statement of Hautefeuille, and it would seem also of the French Government, in the recent letter of M. Thouvenel.

But there is yet another question which remains. Assuming that dispatches may be contraband, would their presence on board a neutral ship, sailing between two neutral ports, render the voyage illegal? The mail steamer was sailing between Havana, a port of Spain, and St. Thomas, a port of Denmark. Here again, if we bow to British precedent, the answer will be prompt. The British oracle has spoken. In a well-considered judgment, Sir William Scott declares that dispatches taken on board a neutral ship, sailing from a neutral country and bound for another neutral country, are contraband; but that where there was reason to believe the master ignorant of their character, "it is not a case in which the property is to be confiscated, although in this, as in every other instance in which the enemy's dispatches are found on board a vessel, he has justly subjected himself to all the inconveniences of seizure and detention, and to all the expenses of those judicial inquiries which they have occasioned." (The *Rapid*, Edwards's Rep., 221.) Such is the law of nations according to Great Britain.

But even if this rule had not been positively repudiated by the United States, it is so inconsistent with reason, and, in the present condition of maritime commerce, so utterly impracticable, that it can find little favor. If a neutral voyage between two neutral ports is rendered illegal on this account, then the postal facilities of the world, and the costly enterprises by which they are conducted, will be exposed to interruptions under which they must at times be crushed, to the infinite damage of universal commerce. If the rule is applicable in one sea, it is applicable in all seas, and there is no part of the ocean which may not be vexed by its enforcement. It would reach to the Mediterranean and to the distant China seas as easily as to the Bahama Straits, and it would be equally imperative in the chops of the British channel. Not only the stately mail steamers which traverse the ocean would be liable to detention and possible confiscation, but the same penalties must attach to the daily packets between Dover and Calais. The simple statement of such a consequence, fol-

lowing directly from the British rule, throws an instant doubt over it which the eloquent judgment of Sir William Scott cannot remove.

But here, again, our way is easy. American principles and practice have settled this question also. Wheaton commences his statement of the law of contraband by saying "the general freedom of neutral commerce with the respective belligerent Powers is subject to some exception. *Among these is the trade with the enemy* in certain articles called contraband of war." (Wheaton's Elements, part 4, cap. 3.) It will be perceived that the trade must be *with the enemy*, not with the neutral. And here the author followed at once the suggestions of reason and the voice of American treaties. Even in the celebrated treaty with Great Britain, negotiated by John Jay in 1794, after an enumeration of contraband articles, it is expressly declared, "and all the above articles are hereby declared to be just objects of confiscation *whenever they are attempted to be carried to an enemy.*" (Statutes, vol. 8, p. 125.) Of course when on the way to neutrals they are free; and the early treaties, negotiated by Benjamin Franklin and John Adams, are in similar spirit; and in precisely the same sense is the treaty with Prussia, in 1828, which, in its twelfth article, revives the thirteenth article of our treaty with that same Power in 1799, by which contraband is declared to be detainable *only when carried to an enemy.* Even if this rule were of doubtful authority with regard to articles of acknowledged contraband, it is positive with regard to dispatches, which, as we have already seen, are among "merchandises and things" declared to be free; with regard to which our early treaties secured the greatest latitude. Nothing can be broader than these words in the treaty of 1778 with France:

"So that they may be transported and carried in the freest manner even to places belonging to an enemy, such towns or places being only excepted as are at the time besieged, blocked up, or invested."—*Statutes*, vol. 8, p. 26.

But the provision in the treaty with the Netherlands of 1782 is equally broad:

"So that all effects and merchandises which are not expressly before named may, *without any exception and in perfect liberty*, be transported by the subjects and inhabitants of both allies from and to places belonging to the enemy, excepting only the places which at the time shall be besieged, blocked, or invested; and those places only shall be held for such which are surrounded nearly by some of the belligerent Powers."—*Statutes*, vol. 8, p. 46.

If the immunity of neutral ships needed further confirmation, it would be found again in the concurring testimony of the French Government—conveyed in the recent letter of M. Thouvenel—which is so remarkable for its brief but comprehensive treatment of all the questions involved in this controversy. I know not how others may feel, but I cannot doubt that this communication, when rightly understood, will be gratefully accepted as a token of friendship for us, and also as a contribution to those maritime rights for which France and the United States, in times past, have done so much together. This eminent minister does not hesitate to declare that if the flag of a neutral cannot completely cover persons and merchandise beneath it in a voyage between two neutral ports, then its immunity will be but a vain word.

And now, as I conclude what I have to say on contraband in its several divisions, I venture to assert that there are two rules in regard to it, which the traditional policy of our country has constantly declared, and which it has embodied in treaty stipulations with every Power which could be persuaded to adopt them: First, that no article shall be contraband unless it be expressly enumerated and specified as such by name. Secondly, that when such articles, so enumerated and specified, shall be found by the belligerent on board a neutral ship, the neutral shall be permitted to deliver them to the belligerent whenever, by reason of their bulk or quantity, such delivery may be possible, and then the neutral shall, without further molestation, proceed with all remaining innocent cargo to his destination, being any port, neutral or hostile, which at the time is not actually blockaded.

Such was the early fixed policy of our country with regard to contraband in neutral bottoms. It is recorded in several of our earlier European treaties. Approximation to it will be found in other European treaties, showing our constant effort in this direction. But this policy was not supported by the British theory and practice of international law, which was especially active during the wars of the French Revolution; and to this fact may, perhaps, be ascribed something of the difficulty which our Government encountered in its efforts to secure for this liberal policy the complete sanction of European States. But in our negotiations with the Spanish-American States the theory and practice of Great Britain were less felt; and so to-day that liberal policy, embracing the two rules already stated touching contraband, is among all American States the public law of contraband, stipulated and fixed in solemn treaties. I do not quote their texts, but I refer to all these treaties, beginning with the convention between the United States and Columbia in 1824. These rules, if not directly conclusive on the question of contraband in the present controversy, at least help to exhibit that spirit of emancipation with which our country has approached the great subject of Maritime Rights.

Of course this whole discussion proceeds on the assumption that the rebels are to be regarded as belligerents, which is the character already accorded to them by Great Britain. If they are not regarded as belligerents, then the proceeding of Captain Wilkes is indubitably illegal and void. To a political offender, however deep his guilt—though burdened with the undying execrations of all honest men, and bending beneath the consciousness of the ruin which he has brought upon his country—the asylum of a foreign jurisdiction is sacred, whether on shore or on sea; and it is among the proudest boasts of England, at least in recent days, that the exiles of defeated democracies as well as of defeated dynasties have found a sure protection beneath her meteor flag. And yet this Power has not always accorded to other flags what she claimed for her own. One of the objections diplomatically presented by Great Britain at the beginning of the present century to any renunciation of the pretension of impressment, was “that facility would be given, particularly in the British Channel, by the immunity claimed by American

vessels, to the escape of traitors,” (State Papers, vol. 3, p. 86,) thus assuming that traitors—the companions of Robert Emmett, in Ireland, or the companions of Horne Took, in England—ought to be arrested on board a neutral ship; but that the arrest could be accomplished only through the pretension of impressment. But this flagrant instance cannot be a precedent for the United States, which has always maintained the right of asylum as firmly as it has rejected the pretension of impressment.

If I am correct in this review then the conclusion is inevitable. The seizure of the rebel-emissaries on board a neutral ship cannot be justified according to our best American precedents and practice. There seems to be no single point where the seizure is not questionable, unless we choose to invoke British precedents and practice, which beyond doubt led Captain Wilkes into the mistake which he committed. In the solitude of his ship he consulted familiar authorities at hand, and felt that in following Vattel and Sir William Scott, as quoted and affirmed by eminent writers, reinforced by the inveterate practice of the British navy, he could not err. He was mistaken. There was a better example; it was the constant, uniform, unhesitating practice of his own country on the ocean, conceding always the greatest immunities to neutral ships, unless sailing to blockaded ports—refusing to consider dispatches as contraband of war—refusing to consider persons, other than soldiers or officers, as contraband of war; and protesting always against an adjudication of personal rights by the summary judgment of a quarter-deck. Had these well-attested precedents been in his mind, the gallant captain would not, even for a moment, have been seduced from his allegiance to those principles which constitute a part of our country's glory.

Mr. President, let the rebels go. Two wicked men, ungrateful to their country, are let loose with the brand of Cain upon their foreheads. Prison doors are opened; but principles are established which will help to free other men, and to open the gates of the sea. Never before in her active history has Great Britain ranged herself on this side. Such an event is an epoch. *Novus sæculum nascitur ordo*. To the liberties of the sea this Power is now committed. To a certain extent this cause is now under her tutelary care. If the immunities of passengers, not in the military or naval service, as well as of sailors, are not directly recognized, they are at least implied; if neutral rights are not ostentatiously proclaimed, they are at least invoked; while the whole pretension of impressment, so long the pest of neutral commerce, and operating only through the lawless adjudication of a quarter-deck, is made absolutely impossible. Thus is the freedom of the sea enlarged, in the name of peaceful neutral rights, not only by limiting the number of persons who are exposed to the penalties of war, but by driving from it the most offensive pretension that ever stalked upon its waves. To such conclusion Great Britain is irrevocably pledged. Nor treaty nor bond was needed. It is sufficient that her late appeal can be vindicated only by a renunciation of early, long-continued tyranny. Let her bear the rebels back. The consideration is ample; for

the sea became free as this altered Power went forth upon it, steering westward with the sun, on an errand of liberation.

In this surrender, if such it may be called, our Government does not even "stoop to conquer." It simply lifts itself to the height of its own original principles. The early efforts of its best negotiators—the patriot trials of its soldiers in an unequal war—have at length prevailed, and Great Britain, usually so haughty, invites us to practice upon those principles which she has so strenuously opposed. There are victories of force. Here is a victory of truth. If Great Britain has gained the custody of two rebels, the United States have secured the triumph of their principles.

If this result be in conformity with our cherished principles, it will be superfluous to add other considerations; and yet I venture to suggest that estranged sympathies abroad may be secured again by an open adhesion to those principles, which already have the support of the Continental Governments of Europe, smarting for years under British pretensions. The powerful organs of public opinion on the Continent are also with us. *Hautefeuille*, whose work on the Law of Nations is the arsenal of neutral rights, has entered into this debate with a direct proposition for the release of these emissaries as a testimony to the true interpretation of international law. Another distinguished Frenchman, *Agenor de Gasparin*, whose impassioned love of liberty and enlightened devotion to our country give to his voice all the persuasion of friendship, has made a similar appeal. And a journal, which of itself is an authority, the *Revue des Deux Mondes*, hopes that the United States will let the rebels go, simply because "it would be a triumph of the rights of neutrals to apply them for the advantage of a nation which has ever opposed and violated them."

But this triumph is not enough. The sea-god will in future use his trident less; but the same principles which led to the present renunciation of early pretensions, naturally conduct to yet further emancipation of the sea. The work of maritime civilization is not finished. And here the two nations, equally endowed by commerce, and matching each other, while they surpass all other nations, in peaceful ships, may gloriously unite in setting up new pillars, which shall mark new triumphs, rendering the ocean a highway of peace, instead of a field of blood.

The congress of Paris, in 1856, where were assembled the plenipotentiaries of Great Britain, France, Austria, Prussia, Russia, Sardinia, and Turkey, has already led the way. Adopting the early policy of the United States, often proposed to foreign nations, this congress has authenticated two important changes in restraint of belligerent rights; first, that the neutral flag shall protect enemy's goods except contraband of war, and secondly, that neutral goods, except contraband of war, are not liable to capture under an enemy's flag. This is much. Another proposition, that privateering should be abolished, was defective in two respects; first, because it left nations free to employ private ships under a public commission as ships of the navy, and, therefore, was nugatory; and, secondly, because if not nugatory, it was too obviously in the special interest of Great Britain, which, through her commanding

navy, would thus be left at will to rule the sea. No change can be practicable which is not equal in its advantages to all nations; for the Equality of Nations is not merely a dry dogma of international law, but a vital national sentiment common to all nations. This cannot be forgotten; and every proposition must be brought sincerely to this equitable test.

But there is a way in which privateering can be effectively abolished without any shock to the Equality of Nations. A simple proposition, that private property shall enjoy the same immunity on the ocean which it now enjoys on land, will at once abolish privateering, and relieve the commerce of the ocean from its greatest perils, so that, like commerce on land, it shall be undisturbed except by illegal robbery and theft. Such a proposition will operate equally for the advantage of all nations. On this account, and in the policy of peace, which our Government has always cultivated, it has been already presented to foreign Governments by the United States. You have not forgotten the important paper in which Mr. Marcy did this service, or the recent efforts of Mr. Seward in the same direction. In order to complete the efficacy of this proposition, and still further to banish belligerent pretensions, contraband of war should be abolished, so that all ships may freely navigate the ocean without being exposed to any question as to the character of persons or things on board. The Right of Search, which, on the occurrence of war, becomes an omnipresent tyranny, subjecting every neutral ship to the arbitrary invasion of every belligerent cruiser, would then disappear. It would drop, as the chains drop from an emancipated slave; or rather it would only exist as an occasional agent, under solemn treaties, in the war waged by civilization against the slave trade; and then it would be proudly recognized as an honorable surrender to the best interests of humanity, glorifying the flag which made it.

With the consummation of these reforms in maritime law, not forgetting blockades under international law, war would be despoiled of its most vexatious prerogatives, while innocent neutrals would be exempt from its torments. The statutes of the sea, thus refined and elevated, will be the agents of peace instead of the agents of war. Ships and cargoes will pass unchallenged from shore to shore; and those terrible belligerent rights, under which the commerce of the world has so long suffered, will cease from troubling. In this work our country began early. It had hardly proclaimed its own independence before it sought to secure a similar independence for the sea. It had hardly made a Constitution for its own Government before it sought to establish a constitution similar in spirit for the government of the sea. If it did not prevail at once, it was because it could not overcome the unyielding opposition of Great Britain. And now the time is come when this champion of belligerent rights "has changed his hand and checked his pride." Welcome to this new-found alliance. Welcome to this peaceful transfiguration. Meanwhile, throughout all present excitements, amidst all present trials, beneath all threatening clouds, it only remains for us to uphold the perpetual policy of the Republic, and to stand fast on the ancient ways.



DisBL






3 2044 010 076 099

WIDENER LIBRARY

Harvard College, Cambridge, MA 02138: (617) 495-2413

If the item is recalled, the borrower will be notified of the need for an earlier return. (Non-receipt of overdue notices does not exempt the borrower from overdue fines.)

	 <p>WIDENER LIBRARY CANCELLED JAN 9 1906 BOOK D</p>

Thank you for helping us to preserve our collection!

